

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PARK IRMAT DRUG CORP.

Plaintiff,

- vs. -

OPTUMRX, INC.

Defendant.
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: Index No. 15-CV-08930

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: (Rakoff, J.)

:
: **NOTICE OF MOTION**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, and upon all prior proceedings, pleadings, and filings in this Action, Plaintiff Park Irmat Drug Corp. will move this Court at the United States Courthouse for the Southern District of New York, 500 Pearl Street, Courtroom 14B, New York, New York, before the Honorable Jed S. Rakoff, United States District Judge, for an Order pursuant to Local Civil Rule 6.3 and Rule 59(e) of the Federal Rules of Civil Procedure granting Plaintiff’s motion for a preliminary injunction, in reconsideration of the Court’s Order of December 16, 2015 and Opinion of January 12, 2016.

Plaintiff respectfully submits that the Court overlooked controlling Second Circuit precedent with respect to the determination of the balance of hardships in deciding a motion for a preliminary injunction, set forth in *Roso-Lino Beverage Distributors, Inc. v. Coca-Cola Bottling Co.*, 749 F.2d 124 (2d Cir. 1984); *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197 (2d Cir. 1970); and *Buffalo Courier-Express, Inc. v. Buffalo Evening News, Inc.*, 601 F.2d 48 (2d Cir. 1979). Plaintiff also respectfully submits that the Court erred in holding that the undisputed lack of an “Exhibit A” to the 2015 Pharmacy Network Agreement did not raise sufficiently serious questions going to the merits of Plaintiff’s claims to make them a fair ground for litigation.

In accordance with the schedule set by the Court, Plaintiff’s moving papers will be filed

and served on or before February 1, 2016, and Defendant's answering papers shall be filed and served on or before February 10, 2016.

Dated: New York, New York
February 1, 2016

CONSTANTINE CANNON LLP

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